

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

117

1. RSA-3278-2019 (O&M)
Date of decision: 06.03.2025

JOGINDER SINGH (DECEASED) THROUGH LRS. AND ORS

..Appellants

Versus

GURPREET SINGH BRAR AND OTHERS

..Respondents

2. CR-4854-2019 (O&M)

SUKHVINDER SINGH SIDHU

..Petitioner

Versus

GURPREET SINGH BRAR AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

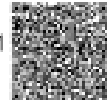
Present: Mr. Krishan Kumar Gupta, Advocate
for the appellants (in RSA-3278-2019)
for the petitioner (in CR-4854-2019).

Mr. Tejinder Pal Singh Tung, Advocate
for respondent No.1.

ANIL KSHETARPAL, J(Oral)

1. Defendant No.2-6 assail the correctness of concurrent findings of fact arrived at by the Courts below while decreeing plaintiff's suit for recovery of Rs.10,50,000/- along with interest at the rate of 9%. The operative part of the decree passed by the trial Court reads as under:-

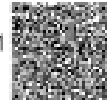
"It is hereby ordered that the suit of the plaintiff succeed and the same stands decreed with cost of Rs.10,50,000/- with interest @ 9% per annum on the said amount from July 2007 till the filing of the suit and the same rate of interest on this amount is awarded during the pendency of this suit and further the plaintiff is entitled to recovery the interest only @ 9% per annum on a sum of Rs.88 lacs from July 2004 till 25.01.2007 and whatsoever amount of interest has become due on sum of Rs.88 lac from July



2004 till 25.01.2007 further interest @ 9% per annum on the said amount is also awarded to the plaintiff from 25.01.2007 onwards till the filing of this suit and also during the pendency of the suit. However, on the entire amount due till today as stated above interest @ 6% per annum is awarded from today till realization against the defendants.”

2. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.

3. The plaintiff Sh. Gurpreet Singh Brar filed suit for recovery of Rs.1,85,91,523/- along with interest while alleging that defendant No.1 has set up a Dental College and Hospital and the plaintiff was approached by defendant No.3 and 4 for lending a sum of Rs.1,00,00,000/- on interest at the rate of 24% per annum. The plaintiff was informed that defendant No.5 and 6 were also members of the Society and own valuable immovable properties at Mohali. Defendant No.5 and 6 also contacted the plaintiff and assured that his money will be secured and would be refunded to him on demand along with interest at the rate of 24%. Thus, the plaintiff paid Rs.88,00,000/-. Subsequently, plaintiff received refund of Rs.1,00,000/- through cheque, which on presentation was dishonoured. The plaintiff demanded the amount, which was not paid. However, the plaintiff was paid Rs.6,50,000/- in December, 2006 and thereafter, he was paid Rs.70,00,000/- vide different cheques. However, his balance payment has not been made. The plaintiff asserted that the Society, Dental College and Hospital (defendant No.2) and defendant No.3 to 6 namely Chairman and Members of the Society are liable. All the defendants filed joint written statement claiming that the suit of the plaintiff is time barred and no cause of action exist in favour of the plaintiff. The averments made by the plaintiff were denied and it was



asserted that the plaintiff himself approached the defendants and extended his financial help with the hope that in future he would become one of the trustee of the Society in case the college runs properly and gains popularity otherwise he would get back his amount invested in the college.

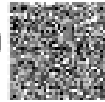
4. From the pleadings of the parties, the following issues were framed:-

- “1. Whether the plaintiff is entitled to recovery of Rs.1,85,91,523/- as prayed for? OPP*
- 2. Whether plaintiff is entitled to interest @ 24% per annum from the date of filing of suit? OPP*
- 3. Whether the plaintiff has concealed the material facts from the Court, if so, its effect? OPP*
- 4. Whether the suit of the plaintiff is time barred? OPD*
- 4-A. Whether the plaintiff has affixed the property Court fee on the value of the suit? OPP*
- 4-B. Whether this Court has territorial jurisdiction to entertain and try the present suit? OPP*
- 5. Whether plaintiff has forged by tempering the writing dated 25.11.2006? OPD*
- 6. Relief.”*

5. The trial Court as well as First Appellate Court decreed the suit. Learned counsel for the appellant while referring to Section 6 and 8 of the Societies Registration Act, 1860, submits that defendant No.3 to 6 have no individual liability as the loan was paid to the Society. He submits that the Courts have erred in passing the decree against the appellants. In support of his submissions, he relies upon the following judgments:-

- “i. Someswara Swamy Vari Devasthanam Vs. Dasam Suryanarayana and others, 2004 AIR (AP) 223.*
- ii. Swami Satchitanand and others Vs. 2nd Addl. Income Tax Officer and others, 1964 AIR (Kerala) 118*
- iii. Satyavart Sidhantalankar Vs The Arya Samaj, 1946 AIR (Bombay) 516”*

6. He further submits that the appellants have been refunded the amount in the following manner:-



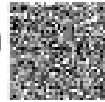
*“i. Cheque No. 606641 of State Bank of Bikaner and Jaipur, Chandigarh dated 23.12.2006 of Rs. 1.50 lacs drawn in favour of S. Gurpreet Singh Brar.
ii) Pay order No. 180339 of State Bank of Bikaner and Jaipur, Chandigarh dated 23.12.2006 of Rs. 5.00 lacs drawn in favour of S. Gurpreet Singh Brar.
iii) Cheque No. 606651 of State Bank of Bikaner and Jaipur, Chandigarh dated 25.01.2007 of Rs. 20.00 lacs drawn in favour of S. Gurpreet Singh Brar.
iv) Cheque No. 606674 of State Bank of Bikaner and Jaipur, Chandigarh dated 05.03.2007 of Rs. 40.00 lacs drawn in favour of S. Gurpreet Singh Brar.
v) Cheque No. 606998 of State Bank of Bikaner and Jaipur, Chandigarh dated 06.07.2007 of Rs. 10.00 lacs drawn in favour of S. Gurpreet Singh Brar.
vi) Cheque No. 499594 dated 31.07.2006 drawn on OBC Bank of Rs. 1.00 lac was dishonored and therefore, paid in cash in lieu of the amount of this cheque (as admitted in prar no. 8 of the suit).”*

7. Hence, the interest could not be directed to be paid on the amount, which stood paid in a staggered manner and there is no provision for capitalization of the amount of interest. In other words, interest on the amount of interest could not be provided in absence of contract.

8. Per contra, learned counsel for respondents submits that the plaintiff paid the amount on the request of defendant No.3 to 6, who had constituted the Society. He submits that the appellants cannot now turn around and deny their liability.

9. This Court has considered the submissions of learned counsel for the parties.

10. It may be noted that all the defendants had filed a joint written statement. There was no separate defence taken by the defendant No.3 to 6 to the effect that they are not individually liable. Appellants neither prayed for culling out a distinct and separate issue on that aspect nor pressed this



submission before the Courts below. For the first time, in this regular second appeal, it is not permissible to make out new case.

11. The judgments relied upon by learned counsel for the appellant cannot come to the rescue of the appellants. Moreover, defendants have themselves asserted in the written statement that the amount was required to be refunded to the plaintiff if the venture fails to take off/run successfully. Hence, they cannot go back from their stand in the written statement.

12. There is some merit in the argument of learned counsel for the appellants with regard to rate of interest. The refund of amount in the staggered manner is not in dispute. The amount of Rs.1,50,000/- was paid vide cheque dated 23.12.2006, whereas, amount of Rs.20,00,000/- was paid vide cheque dated 25.01.2007. Similarly, amount of Rs.40,00,000/- and Rs.10,00,000/- vide cheque dated 05.03.2007 and 06.07.2007, was refunded. Hence, he will be entitled to interest from the date amount of Rs.88,00,000/- was paid till the date of its repayment.

13. The plaintiff paid the amount in the following manner:-

“i) Bank Draft No. 084075 of Union Bank of India, Dehradun dated 05.06.2004 of Rs. 50.00 lacs drawn in favour of Sri Guru Arjan Dev Educational Society (Regd.), Mohali.

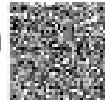
ii) Bank Draft No. 084181 of Union Bank of India, Dehradun dated 15.06.2004 of Rs. 9.00 lacs drawn in favour of Sri Guru Arjan Dev Educational Society (Regd.), Mohali.

iii) Bank Draft No. 084182 of Union Bank of India, Dehradun dated 15.06.2004 of Rs. 9.00 lacs drawn in favour of Sri Guru Arjan Dev Educational Society (Regd.), Mohali.

iv) Bank Draft No. 084183 of Union Bank of India, Dehradun

dated 15.06.2004 of Rs. 7.00 lacs drawn in favour of Sri Guru Arjan Dev Educational Society (Regd.) Mohali.

v) Bank Draft No. 244718 of Bank of Punjab, Dehradun in the month of July, 2004 of Rs. 5.00 lacs drawn in



*favour of Sri Guru Arjan Dev Educational Society
(Regd.), Mohali.
vi) Rs.8.00 lacs in cash was paid in the month of July
2004 through the Chairman.”*

14. The Executing Court will calculate the amount of interest as ordered by the trial Court for the period, the amount was retained by the defendants. However, the principal amount will reduce once some payment out of principal amount was refunded to the plaintiff.

15. The remaining decree will remain intact.

16. It is clarified that there shall not be any capitalization of interest.

17. With these observations, the appeal is disposed of.

18. All the pending miscellaneous applications, if any, are also disposed of.

CR-4854-2019

19. In Civil Revision No.4854 of 2019, the petitioner (defendant No.4) assails the correctness of Executing Court's order attaching his property. Since, the decree against all the defendants is joint and several, hence, the property of one of the judgment debtor can be attached.

20. Consequently, the revision petition is dismissed.

21. All the pending miscellaneous applications, if any, are also disposed of.

March 06th, 2025

Ayub

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No